

Appl. No. : 10/541,281
I.A. Filed : December 31, 2003

REMARKS

Claims 1, 4, and 6-15 stand rejected. Applicant has amended Claim 1. Claims 1, 4, and 6-15 remain pending in the application and are presented for examination in view of the amendments and the following remarks.

Drawings

The drawings were previously objected to for not illustrating the “straight incisions which extend from said upper edge to the external circumference of the opening and further extend beyond the lower circumferential edge over a length of at least a few mm to about 2 cm” recited in Claim 15. In response, Applicant amended Figure 1 to illustrate the recited structure. Specifically, Applicant extended the illustrated incision 10 for opening 6 beyond the lower circumferential edge as described in the specification at paragraph [0023].

This amendment was objected to for illustrating the extending incision on only one opening. As this replacement sheet has not been entered, Figure 1 remains as original. To overcome the outstanding objection, another drawing, Figure 1A has been added which shows the bag of Figure 1 with incisions extending beyond the lower circumferential edge of the openings. No new matter has been added.

The Specification Has Been Amended

Applicant has amended the specification to add citations to Figure 1A in conjunction with the addition of Figure 1A. No new matter has been added.

The Specification was Objected To

The specification was objected to under 37 CFR 1.71 for not providing support for “the front flat foil bag portion has one or more incisions between the upper edge and the opening” as Claim 1 previously recited. In view of the amendment to Claim 1, Applicant submits that this objection is overcome.

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Rejections under 35 U.S.C. § 103(a)

The Examiner rejected independent Claim 1 and dependent Claims 4, 6, 7, 9, 10 and 12-14 under U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,068,128 to Gardner in view of Gates (U.S. Patent No. 6,318,893) or Wolske (U.S. Patent No. 4,207,983). Dependent Claims 8 and 11 were rejected under U.S.C. § 103 as being unpatentable over Gardner in view of Meyer et al. (U.S. Patent No. 6,575,300). Dependent Claim 15 was rejected under U.S.C. § 103 as being unpatentable over Gardner in view of Wilfong, Jr. (U.S. Patent No. 4,995,860).

Gardner discloses a foil bag 701 (Figure 7) having openings 129A, 129B for positioning the bag upon a pin support. The bag 701 is provided with slits 733A, 733B, 734B, 734B to reduce the pulling and separation force 710 required to separate an upper portion 201 of the front panel 103 and front gusset portions 111A, 111B from the wicket prongs. The bag is essentially adapted for being manually opened (see col. 5, lines 12 – 15) although pneumatic opening is mentioned.

Amended Claim 1 recites, *inter alia*, “the incision is extending from the upper edge to the said opening, in such a way that an essentially straight continuous incision is provided between the opening and the upper edge.” The Office Action relied upon Gates or Wolske for disclosing the claimed feature. U.S. Patent No. 6,318,893 to Gates is directed towards a bag that when sealed does not wrinkle. While Figures 1 through 7 illustrate incisions in the bag, the incisions are not mentioned in the description and have no reference numbers. Figures 2, 3, and 8 illustrate large, wide incisions. Figures 1 and 4 illustrate small incisions that do not extend to the edge of the tongue 20. The large, wide incisions illustrated in Figures 2, 3, and 8 are likely an erroneous simplification in the drawings. Furthermore, the front flat foil portions of the bag disclosed in Gates do not have “a number of punched openings in the vicinity of the upper edges of the foil bag to be unfolded, whereby a bundle of foil bags are configured to be supported by a foil bag opening machine having a pin support” as recited in Claim 1. During opening the bag in Gates is supported on the sides by a pair of finger assemblies 40. As a result, the front bag portion in Gates cannot be pulled off the pin support to open or spread the bag by keeping the rearward bag portion suspended upon the pin support.

Further, there is no motivation to modify the bag of Gardner to include the incisions from Gates since the finger assemblies 40 in Gates “grab and pinch the upper corners of bag 10 to hold bag 10 while it is being opened, filled, and sealed” (see Gates at column 3, lines 18-20) Unlike

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the openings 22 in Gates, which are designed such that they “allow bag 10 to be mounted on a wicket during storing *before* bag 10 is filled and sealed” (see Gates at column 3, lines 3-4), the openings 129A, 129B in Gardner are used to support the bag during the opening and filling operation.

The proposed modification of replacing the supportive, perforated holes of Gardner with the large, wide incisions of Gates would render the bag of Gardner unsatisfactory for its intended purpose (i.e. being supported on a wicket while being filled with goods), thus there is no suggestion or motivation to make the proposed modification. Accordingly, there is no motivation to combine the large, wide incisions in the tongue 20 from Gates with the openings 129A, 129B from Gardner.

Wolske discloses a pair of holes 21 with a weakening 25 extending from the upper edge to the opening. Applicant respectfully submits that this weakening 25 is not an incision as recited in Claim 1. Wolske discloses that a bag is removed “from the means extending through the holes by *tearing* through the strip from the holes 21 to the outer lateral edge 23 of the strip. *To facilitate tearing*, the strip may be *weakened* as indicated by 25 on lines extending from the holes to the outer edge” (Wolske at column 3, lines 34-39, emphasis added). Thus, the incisions recited in Claim 1 are not disclosed by the Wolske reference.

Additionally, it would be improper to combine the references of Wolske and Gardner, as the purpose of the “means extending through the holes” in Wolske and the wicket used with the bag recited in Claim 1 differ.

The purpose for the pair of holes in the bag disclosed by Wolske is for “holding a plurality of the bags in a stack” (see Wolske at column 3, lines 31-32). Additionally, in one mode of use “the stack of bags is thereby *held on the pins* with each successive bag adapted to be opened at its mouth, *separated from the stack for being filled* by tearing its flap off the pins” (see Wolske at column 3, lines 64-67). Although the bag is “held” by a wicket, Wolske does not teach to support the bag by the wicket. More specifically, Wolske does not teach having the wicket support the bag during a filling operation. To the contrary, Wolske teaches to remove the bag from the wicket (or pins) by tearing *before* the filling operation. Thus, it would be improper to combine the references of Wolske and Gardner.

Therefore, Applicant respectfully submits that the rejection of independent and amended Claim 1 has been overcome.

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Dependent Claims

Claims 4 and 6 through 15 depend directly or indirectly from Claim 1 and, thus, are patentable for at least the same reasons that the claim from which they depend is patentable over the applied art. Therefore, allowance of dependent Claims 4 and 6 through 15 is respectfully requested.

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CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole.

Any claim amendments which are not specifically discussed in the above remarks are not made for patentability purposes, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments. Rather, these amendments have only been made to increase claim readability, to improve grammar, and to reduce the time and effort required of those in the art to clearly understand the scope of the claim language.

Applicant has not presented all arguments concerning whether the applied references can be properly combined in view of the clearly missing elements noted above, and Applicant reserves the right to later contest whether a proper motivation and suggestion exists to combine these references.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: 

James F. Herkenhoff
Registration No. 51,241
Attorney of Record
Customer No. 20,995
(619) 235-8550